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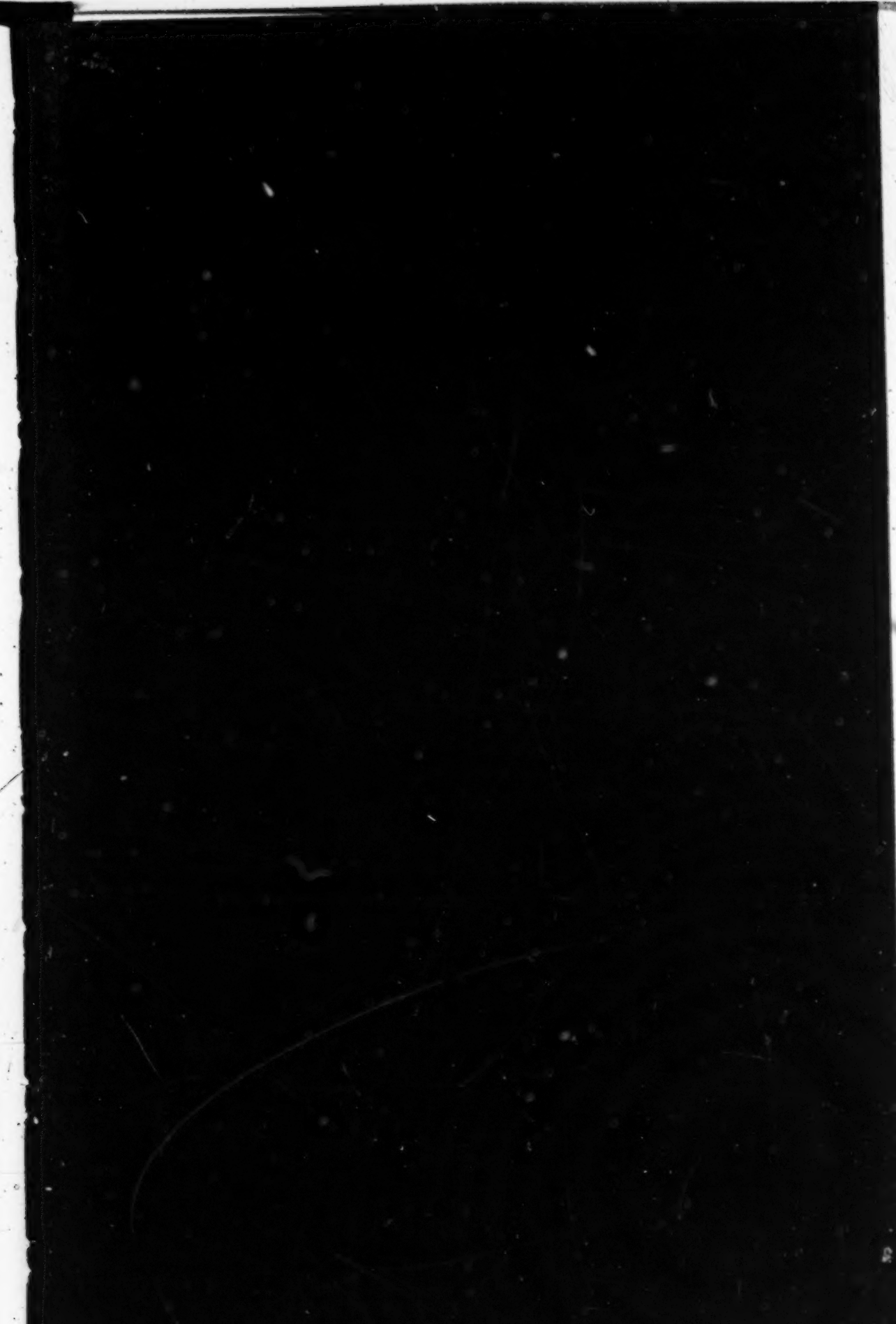

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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 156

THE DETROIT BANK, FORMERLY THE DETROIT SAVINGS BANK, A MICHIGAN BANKING CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

No. 214

STATE OF MICHIGAN, JOHN J. O'HARA, AUDITOR GENERAL FOR THE STATE OF MICHIGAN, COUNTY OF WAYNE, A CORPORATE BODY POLITIC, JACOB P. SUMERACKI, TREASURER FOR THE COUNTY OF WAYNE, CITY OF DETROIT, A MUNICIPAL CORPORATION, AND ALBERT E. COBO, TREASURER OF THE CITY OF DETROIT, PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The District Court issued no opinion. Its findings of fact and conclusions of law (R. 229–243,

245) are reported at 41 F. Supp. 41. The opinion of the Circuit Court of Appeals (R. 292–296) is reported at 127 F. 2d 64.

JURISDICTION.

The judgments of the Circuit Court of Appeals were entered April 8, 1942. (R. 289–291.) Petition for a writ of certiorari was filed by The Detroit Bank on June 17, 1942. Petition for a writ of certiorari was filed by the State of Michigan, the County of Wayne, the City of Detroit and the state and local officials on July 7, 1942. Both petitions were granted on October 12, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

No. 156

1. Whether the Government's lien for federal estate taxes, established by Section 315 (a) of the Revenue Act of 1926, attaches to property owned by a decedent as one of the tenants of an estate by the entirety.

2. Whether the Government's lien for federal estate taxes, although unrecorded, is superior to the lien of a mortgagee who thereafter acquires a mortgage for value, in good faith and without actual knowledge of the prior lien. This depends upon whether the lien for federal estate taxes is independent of, or is subject to, the provisions of Section 3186 of the Revised Statutes, as amended.

3. Whether, as applied to bind subsequent mortgages, Section 315 (a) offends the Fifth Amendment.

214

Questions similar to No. 156 are raised and the following question in addition:

4. Whether the Government's lien for federal estate taxes, under the Federal Constitution, is superior to liens for unpaid state and local real estate taxes which attach subsequent to the lien for the federal tax.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The statutes and constitutional provisions involved are set out in the Appendix, *infra*, pp. 45–52.

STATEMENT

The material facts, which for the most part were stipulated (R. 100–130–f), were found by the District Court as follows:

John P. Paul, a resident of Detroit, Michigan, died intestate on May 5, 1926. On July 5, 1927, Lena Paul, decedent's widow, filed a federal estate tax return in the office of the Collector of Internal Revenue, Detroit, and paid the tax reflected by the return. (R. 229.) On March 14, 1930, the Commissioner of Internal Revenue notified Lena Paul of the determination of a proposed deficiency in federal estate taxes in the sum of $23,271.84. (R. 229–230.) Thereafter, Lena Paul

filed an appeal with the United States Board of Tax Appeals seeking a redetermination of the proposed deficiency. On November 4, 1932, the Board of Tax Appeals entered an order in that proceeding approving the Commissioner's determination. No appeal was taken from this decision. On February 19, 1933, pursuant to statute, the Commissioner of Internal Revenue assessed against the estate of John P. Paul a deficiency in federal estate taxes in the principal amount of $23,271.84, together with interest in the sum of $8,080.28. No part of this deficiency has been paid. (R. 230.)

At the time of his death, John P. Paul and his wife, Lena Paul, as tenants by the entirety, owned or held land contracts upon forty-two of the fifty parcels of real estate involved in this proceeding. The remaining eight parcels (numbered 40–47 in the bill of complaint) were formerly owned by John P. Paul but had been given by him to certain of his children less than two years prior to his death. These eight parcels were considered by the Commissioner of Internal Revenue and held by the Board of Tax Appeals to be a part of decedent's gross estate as property transferred in contemplation of death. (R. 230–231.)

Subsequent to decedent's death and prior to July, 1931, ten parcels of the real estate were mortgaged either by Lena Paul or by the Paul children, who held title at the time, to petitioner,

The Detroit Bank, hereinafter referred to as the Bank. (R. 235–238.) All of the parcels so mortgaged were among the forty-two which had been owned or upon which contracts had been held by John P. Paul and Lena Paul as tenants by the entirety. (R. 230–231, 236–238.) The obligations secured by these mortgages were thereafter defaulted and the properties were foreclosed and bid in by the Bank in 1934. (R. 236.) At the time the Bank loaned money upon the security of these mortgages it had no actual knowledge that the United States had or claimed to have any lien on this property; the Bank acquired the mortgages in good faith and for value. (R. 239.) Another parcel was mortgaged to a second bank in July, 1929, and this mortgage likewise was foreclosed, in March, 1936. (R. 188, 238–239.) In addition, some thirteen other parcels had been mortgaged prior to decedent's death. (R. 233–235.)

At the time of the trial of this case there were unpaid local real estate taxes due to the State of Michigan, the County of Wayne and the City of Detroit or the City of Highland Park upon some thirty-five of the fifty parcels. None of the unpaid real estate taxes was for years prior to 1929.[1] (R. 115–129, 239.)

[1] The properties upon which real estate taxes were due included a few of the parcels mortgaged prior and subsequent to John P. Paul's death. (Cf. R. 115–129 with R. 233–238.)

The estate of John P. Paul was not probated and there are no assets, other than the real estate here involved, from which the federal estate tax can be collected. (R. 239.)

Pursuant to Section 3207 of the Revised Statutes, as amended, the United States on May 4, 1936, instituted a suit in equity to foreclose its lien upon the fifty parcels of real estate for the unpaid federal estate taxes and interest. Petitioners, the Paul children[2] and all other interested persons, were joined as parties defendant. (R. 1–47.) The District Court found the facts as summarized above (R. 229–240, 245) and concluded that the lien of the United States for the unpaid federal estate taxes and interest was prior in time and superior in right to the liens of mortgages executed subsequent to the death of John P. Paul and to the liens for state, county and city taxes (R. 241). The Government conceded and the court concluded that the lien for federal estate taxes was inferior to the liens created by those mortgages executed prior to the date of the death of John P. Paul. (R. 7, 241.) While not material before this Court, the District Court also concluded that the Paul children were not purchasers for value of any of the real estate involved in this proceeding and that their interest was inferior to that of the United States. (R. 242.) In accord with these conclusions, the Dis-

[2] Lena Paul, the widow of John P. Paul, had died in 1931. (R. 229.)

trict Court ordered the sale of all of the parcels of real estate except those mortgaged prior to the death of John P. Paul. It ordered that the parcels which were not mortgaged and were subject only to the liens for taxes should be sold first and that if the amount received upon the sale of these properties was insufficient to satisfy the unpaid federal estate taxes and interest that the parcels mortgaged subsequent to the death of John P. Paul should then be sold. The court also ordered that all of the parcels sold should be sold free and clear of all encumbrances and that the proceeds should be paid into the court, the liens of the parties to attach to the proceeds in order of their priority as determined by the court. (R. 247–258.)

Thereafter the petitioners before this Court and the Paul children appealed to the Circuit Court of Appeals for the Sixth Circuit. (R. 259, 266, 269, 274, 278.) The Circuit Court of Appeals affirmed the decree of the District Court. (R. 289–291.)

SUMMARY OF ARGUMENT

I

No dispute is present concerning the determination and assessment of the tax deficiency; the controversy concerns solely the priority of the lien for federal estate taxes as against the liens asserted by the petitioners. By the terms of Section 315 (a) of the Revenue Act of 1926 a lien attached to the "gross estate" of the decedent,

including all of the real estate here involved, at the date of his death on May 5, 1926. Petitioner's claim, in No. 156, that the federal lien does not attach to tenancies by the entirety is without foundation, since such interests are expressly included in the "gross estate" as defined in Section 302. Nothing in Section 315 (b) persuades to the contrary. That subsection merely imposes a personal liability on certain classes of transferees. Accordingly, the lien of the United States attached to the fifty parcels of real estate prior in time to any of the liens asserted by the petitioners.

II

The Government's lien for federal estate taxes need not be recorded to be superior to the lien of subsequent mortgages. The lien imposed by Section 315 (a) is a lien wholly separate and apart from that imposed by Section 3186 of the Revised Statutes, as amended. This is shown by comparison of the terms of the two provisions and by their legislative history. Section 315 (a) contains no requirement that the federal lien shall be recorded and, in the absence of such a provision, no recording requirement is to be read into a federal lien statute. As the lien for federal estate taxes exists independently of Section 3186, the recording requirement in the latter section is inapplicable. Difficulties peculiar to the collection of the estate tax necessitate a more effective lien for estate taxes than for other taxes. Congress

has provided a method by which prospective purchasers of estate property and prospective lenders to estates and legatees can be protected. In any event, the circumstances under which estate taxes arise make recordation less necessary in the case of estate taxes than in the case of other taxes.

III

The lien provision is constitutional. Since the decision in *United States* v. *Snyder*, 149 U. S. 210, it has been settled that a federal tax lien need not be recorded to be valid and may not be required by force of state law to be recorded. Nor is the Fifth Amendment violated by the different treatment accorded different types of bona fide purchasers for value. This Court has repeatedly held that, unlike the Fourteenth Amendment, the Fifth Amendment does not contain an equal protection clause. But if it did there would be sufficient basis for the challenged classification, since the fact that the interest of the decedent was terminated only by his death is an ascertainable fact in the case of entirety property, whereas the difficulties of ascertaining that the decedent had any interest at the time of his death are much greater in the case of property of the character included within Section 315 (b).

IV

Finally, by force of the Federal Constitution, the State of Michigan is without authority to dis-

place the Federal lien in favor of liens of the State, the County of Wayne and the City of Detroit attaching subsequent to the date of the Federal lien. Assuming that the Michigan statutes purport either (1) to require the recording of the lien imposed by Section 315 (a) or (2) to make state liens for real estate taxes superior to federal liens, Michigan lacks power to do these things. It is settled that under the Federal Constitution a state is powerless to divest or impair the interest of the United Sates under a pre-existing lien. The United States should prevail over the State and its subdivisions regardless of whether Section 315 (a) or Section 3186 establish the lien. Taxing agencies are not the type of lienholder in whose favor recording laws are enacted and, appropriately therefore, any failure to record a federal lien under Section 3186 would not, by the terms of that section, benefit the State of Michigan and its subdivisions.

ARGUMENT

I

BY THE TERMS OF SECTION 315 (a) OF THE REVENUE ACT OF 1926, A LIEN FOR FEDERAL ESTATE TAXES ATTACHED TO THE REAL ESTATE IN QUESTION AT THE TIME OF DECEDENT'S DEATH

The correctness of the Commissioner's determination and assessment of the deficiency in federal estate taxes and interest cannot be and is not

challenged, the matter having been finally adjudicated by the Board of Tax Appeals. The sole controversy relates to the relative priority of the liens of the petitioners as against the lien asserted by the Government.

The Government's claim is bottomed upon Section 315 (a) of the Revenue Act of 1926. (Appendix, *infra*, p. 46.) This subsection provides that—

> Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

It will be noted that the "lien herein imposed" attaches to the "gross estate of the decedent". Section 302 of the Revenue Act of 1926 (Appendix, *infra*, p. 45), referring to the gross estate, provides in part as follows:

> SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death

of all property, real or personal, tangible or intangible, wherever situated—

* * * * *

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. * * *

* * * * *

(e) To the extent of the interest therein held * * * as tenants by the entirety by the decedent and spouse, * * * except such part thereof as may be shown to have originally belonged to such other person * * *

* * * * *

The "value of the gross estate", referred to in Section 302, must necessarily be measured by the gross estate and, by the subparagraphs of Section 302, above quoted, the value of the gross estate is measured upon tenancies by the entirety held by the decedent and his spouse (there being no contention that the widow originally owned any part of the real estate) and property conveyed in contemplation of death. The forty-two parcels of real estate which decedent at the time of his death owned as a tenant by the entirety and the eight parcels of real estate transferred by decedent in

contemplation of death are thus a part of the gross estate. By the terms of Section 315 (a), in turn, the lien for federal estate taxes attaches to them.

Finally, it is clear that the lien provided by Section 315 (a) attaches at the date of decedent's death. Cf. *Hertz* v. *Woodman,* 218 U. S. 205, 223. The gross estate is determined as of the date of the decedent's death and the federal estate tax itself comes into being at that time. *Ithaca Trust Co.* v. *United States,* 279 U. S. 151, 154–155; *United States* v. *Provident Trust Co.,* 291 U. S. 272, 281. "Unless the tax is sooner paid in full", as used in Section 315 (a), means that the lien shall continue for ten years after decedent's death unless there is full satisfaction of the tax prior to the end of the ten-year period. That such part of the gross estate as may be devoted to the payment of charges against the estate and expenses of administration shall be "divested" of the lien further supports the view that the lien attaches immediately upon decedent's death, without the necessity of prior assessment or demand. The lower courts have uniformly so held. *Rosenberg* v. *McLaughlin,* 66 F. 2d 271 (C. C. A. 9th); certiorari denied, 290 U. S. 696; *United States* v. *Ayer,* 12 F. 2d 194 (C. C. A. 1st); *United States* v. *Security-First Nat. Bank,* 30 F. Supp. 113 (S. D. Cal.); *United States* v. *McGuire,* 42 F.

Supp. 337 (N. J.);[3] *United States* v. *Cruikshank*, 48 F. 2d 352 (S. D. N. Y.). The lien of the United States is thus prior in time to that of any of the liens asserted by the petitioners.

The Bank's contention that properties held by the decedent as a tenant by the entirety are not subject to the lien provided by Section 315 (a) is without merit. Section 315 (a) is unequivocal that the lien shall attach to the "gross estate" of the decedent. In view of *Tyler* v. *United States*, 281 U. S. 497, it is clear that the entire value of this entirety property was part of decedent's "gross estate." We understand the Bank nevertheless to suggest that property which is expressly defined as part of the gross estate, under Section 302, must be regarded as such only for the purpose of arriving at the tax but not for the purpose of the lien in Section 315 (a). It argues that "gross estate" as used in the expression "value of the gross estate" means something different from "gross estate" standing by itself. The Bank's argument, in effect, is that "value of the gross estate", as used in the statute, means "value" of the "gross estate" and of other property which is not part of the "gross estate".

[3] Apparently no appeal was taken in the *Security-First Nat. Bank* case. Shepherd's Citations show that the appeal was dismissed at 113 F. 2d 491, but that citation is erroneous because it relates to a different case. Our records show that no appeal was taken. Judgment has not yet been entered in the *McGuire* case so that the time within which to take an appeal has not expired.

There is nothing in the statute which warrants this *tour de force*.

Section 315 (b) does not impel a contrary conclusion. That subsection makes express reference to (1) transfers of property in contemplation of or intended to take effect in possession or enjoyment at or after death and (2) insurance proceeds passing to a specific beneficiary. The Bank's argument is that Congress would not have deemed it necessary to deal explicitly with these classes of property had they been included in the "gross estate" as that expression is used in Section 315 (a); that the fact that it did so shows that "gross estate" as used in Section 315 (a) means only the "estate" of the decedent as that term is commonly used to refer to the property available for the payment of debts; and that tenancies by the entirety, which concededly are not within Section 315 (b), are thus not covered by Section 315 (a), so that no lien attaches to them. But the first step in this chain of reasoning is erroneous. The purpose of Section 315 (b) is to impose a personal liability on certain transferees, thus supplying in such cases an additional remedy to supplement the lien. The specific provision therein for a "like lien" is the basis for the Bank's argument. However, this specific provision was undoubtedly included in Section 315 (b) because failure to do so, in conjunction with creation of another remedy against these two types of transferees, might be deemed an

expression of intent to make this other remedy exclusive as to such transferees. This caution seemed excessive to Congress in 1942 and while amending in other respects Section 827 (b) of the Internal Revenue Code, which is the codified successor to Section 315 (b), Congress took occasion to delete the language which appears to create a second lien on such property. For this language Congress substituted an express reference to the lien imposed by Section 827 (a) of the Internal Revenue Code, which is the codified successor to Section 315 (a). (Section 411 of the Revenue Act of 1942, Appendix, *infra*, pp. 51–52.) The committees of both houses of Congress explained the substitution as follows (H. Rep. No. 2333, 77th Cong., 2d Sess., p. 168; S. Rep. No. 1631, 77th Cong., 2d Sess., p. 241):

> This section clarifies and amends provisions of the Internal Revenue Code relating to the estate tax lien and transferee liability. Section 827 (a) of the Code imposes a lien upon the gross estate of the decedent. The following subsection provides for a like lien upon assets received by certain persons. *The latter provision is unnecessary and it is therefore eliminated.* Subsection (b), as amended, contains a cross reference to the lien imposed by subsection (a), *which continues to be applicable.* (Italics ours.)

The premise of the Bank's argument—that the interests referred to in Section 315 (b) are not a part of the "gross estate" and therefore would

not have been subjected to the lien if not expressly subjected to it by that subsection—is further negatived by Section 314 (b), immediately preceding Section 315 (a). In Section 314 (b) the term "gross estate" was understood by Congress to include insurance proceeds, although the Bank's argument would preclude such understanding. Insofar as pertinent, Section 314 (b) provides:

> *If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor,* the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of $40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio. (Italics ours.)

All the real estate here involved, then, is a part of decedent's gross estate and by the terms of Section 315 (a) a lien attached to it at the date of decedent's death, prior in time to the attachment of any of the liens asserted by petitioners. These are the fundamental considerations upon which the Government's claim depends. With the exception of the Bank's contention as to tenancies by the entirety, already discussed, petitioners do not appear to challenge these propositions. Petitioners' position, as we understand it, is that whatever the meaning of Section 315 (a) stand-

ing by itself, its language means something entirely different when read in connection with Section 3186 of the Revised Statutes, as amended, and that, in any event, the statutes of Michigan and the Fifth Amendment to the Constitution forbid application to its terms. To these contentions we now turn.

II

THE GOVERNMENT'S LIEN FOR FEDERAL ESTATE TAXES, ALTHOUGH UNRECORDED, IS SUPERIOR TO THE LIEN OF SUBSEQUENT MORTGAGEES

The Bank contends, in No. 156, that Section 315 (a), when read in connection with Section 3186 of the Revised Statutes, as amended (Appendix, *infra*), requires a recording of the Government's lien in order to bind subsequent mortgagees. The significance of this contention derives from the fact that the lien of the United States for federal estate taxes was not recorded prior to the execution of the mortgages taken by the bank.[4] Both courts below rejected the Bank's contention, holding that no statute required the filing of a notice of the federal estate tax lien in order to bind encumbrancers by mortgages executed subsequent to the date the federal lien attaches. We submit that this decision is correct.

Section 3186 of the Revised Statutes, as amended, now carried into Sections 3670–3677 of

[4] Notice of the lien for federal estate taxes was filed in the office of the Register of Deeds for Wayne County on December 26, 1935. (R. 240.)

the Internal Revenue Code, is the general federal lien statute, applicable to "any tax." As it stood at the time of decedent's death, the statute provided:

> That if any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto upon all property and rights to property belonging to such person: *Provided, however,* That such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated: * * * The remainder of the section provided that whenever any state by appropriate legislation authorizes the filing of "such notice" in certain specified places "then such lien shall not be valid in that State against any mortgagee, purchaser, or judgment creditor until such notice" should be so filed.[5] With respect to the requirement of

~~The Bank contends, in No. 156, that Section~~

[5] This section has been subsequently amended (Appendix, *infra*) and the amendments, as we point out, *infra*, pp. 23–24, clarify in one respect the scope of Section 3186. With this exception, the subsequent amendments do not appear to bear upon this case.

notice, Section 3186 stands in striking contrast to Section 315 (a) of the Revenue Act of 1926, which is silent as to the recording of the lien or any other form of notice.

The requirement for the filing of notice of the Government's lien was first inserted in Section 3186 by the amendment of March 4, 1913, c. 166, 37 Stat. 1016. In view of *United States* v. *Snyder*, 149 U. S. 210, decided prior to the amendment, it is not open to question that, absent a federal statute requiring recording, the lien of the United States is superior to subsequent mortgages whether taken with or without notice of the prior lien.[6] Apart from the Bank's claim as to the Fifth Amendment, the question, then, is whether as a matter of statutory construction the notice requirement of Section 3186 should be read into Section 315 (a).

A comparison of these two sections confirms rather than detracts from the conclusion that Section 315 (a) establishes a lien which is wholly independent of the lien provided by Section 3186. In three important characteristics the liens imposed by the two sections differ from each other. *One:* The lien of Section 3186 does not come into

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[6] In *United States* v. *Curry*, 201 Fed. 371, 374 (Md.) the rule was stated:

> The government's lien is unaffected by the fact that a subsequent incumbrancer or purchaser became such without knowledge that the government had any interest in the property or claim upon it.

being before a demand and a refusal to pay the tax, whereas the lien of Section 315 (a) attaches at once upon the death of the decedent without reference to assessment or demand. *Two:* The lien of Section 3186 continues until the liability is paid, whereas the lien of Section 315 (a) continues only for ten years. *Three:* The lien of Section 3186 attaches to "all property and rights to property" belonging to the person liable for the tax, whereas the lien of Section 315 (a) does not attach to all the property of the estate, but only to that not used to pay administration expenses, and does not attach to all the property of a legatee but only to that received from the decedent.

The legislative history of the two statutes also confirms that two entirely separate liens are created. The lien provided by Section 3186 of the Revised Statutes was first enacted in 1866 (Section 9 of the Act of July 13, 1866, c. 184, 14 Stat. 107). When Congress enacted the first estate tax law in 1916 the lien provided by Section 3186 had been in existence for some fifty years and, if it had chosen to do so, Congress could readily have made this lien applicable to estate taxes, without more. It is significant that Congress did not do so.[7] Instead, it provided in Section 209 of

[7] The suggestion of the Bank (Br. 16) that Section 211 of the Revenue Act of 1916 made Section 3186 applicable to the estate tax loses its force when one observes that Section 211 applied only to provisions not inconsistent with the estate tax provisions.

the Revenue Act of 1916 (c. 463, 39 Stat. 756) for a federal estate tax lien in the identical terms which appear in Section 315 (a) of the Revenue Act of 1926. That provision is carried without any change of substance into Section 827 of the Internal Revenue Code (U. S. C., Title 26, Sec. 827). During all this time Section 3186 has been on the statute books. If the lien provided by Section 3186 had been deemed sufficient as applied to estate taxes it is inconceivable that Congress would have taken pains to enact and reenact another statute providing for the same thing. Contrast this with what Congress did when three years prior to the first enactment of the estate tax it first enacted the income tax. No special provision of any sort for a lien was or has been made, as the Bank points out (Br. 14, 15), in the income tax statutes. Thus the lien of Section 3186 is relied on for the enforcement of the income tax, as a result of a congressional silence which is not duplicated in the estate tax statutes. The reasonable inference is that when Congress desires the lien of Section 3186 to be the sole lien applicable to a particular tax, it proceeds as it did in the income tax provisions and not as it did in the estate tax provisions.[8]

[8] Apart from the foregoing history, the legislative materials are unrevealing as to the scope and operation of Section 315 of the Revenue Act of 1926 as well as Section 209 of the Revenue Act of 1916, from which it was derived.

The familiar rule of statutory construction that special provisions will prevail over general ones (*Missouri* v. *Ross,* 299 U. S. 72, 76) supports the conclusion that Section 3186 was deliberately made inapplicable, so far as the field of estate taxes is concerned, upon the enactment of Section 315 (a).

The conclusion that in 1926 Section 315 (a) imposed a lien which was not subject to the recording requirement of Section 3186, Revised Statutes, is strongly supported by the fact that when Congress subsequently determined to make certain requirements of Section 3186 applicable to liens otherwise created, it specifically said so. As it stood in 1926 the first lines of Section 3186 imposed the lien and the recording requirement, which followed shortly, and provided that "such lien" shall not be valid unless notice is filed, etc. The words "such lien" clearly referred to the lien created by Section 3186 and there was no evidence of a purpose to require the recording of any other lien. In 1928 Congress amended Section 3186 by adding subsections (c), (d) and (e), dealing with the release of liens, and at the same

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However, the consistent administrative practice has been to treat the lien imposed by Section 315 and corresponding sections of prior acts as "a lien entirely separate and distinct" from the lien imposed by Section 3186, Revised Statutes, and as "not subject to the provision * * * of the lien therein imposed." (G. C. M. 2663, VII–2 Cum. Bull. 355 (1928).)

time directed (Section 613 (a), Revenue Act of 1928):

> (f) Subsections (c), (d), and (e) of this section shall apply to a lien in respect of any internal-revenue tax, whether or not the lien is imposed by this section.

This amendment provides an explicit recognition by Congress, both that liens separate and apart from the lien of Section 3186 are provided for the enforcement of internal-revenue taxes, and that the recording requirement, now set forth in Section 3672 of the Internal Revenue Code, is inapplicable to such other liens.

The reasons which impelled the adoption of the recording requirement in Section 3186 are not applicable to the estate tax. While the existence of an unsatisfied income, gift or similar tax liability would not be generally known prior to the recordation of the lien, that is not the case with unpaid estate taxes. The decedent's transmission of property at death, which is the occasion of the estate tax, should be a notorious fact to anyone purchasing from or lending to an estate or legatee since the validity of the title or security will depend on it. Thus necessarily forewarned that a taxable event has occurred,[9] a prospective purchaser or lender can often learn from the probate records whether the estate is large enough to be

[9] One dealing with an executor, surviving tenant or legatee does so with knowledge that there may be unpaid estate taxes. See *Shugars* v. *Chamberlain Amusements Enterprises*, 284 Pa. 200, 207; cf. *Heymann* v. *Viane*, 252 N. Y. 159.

taxable and whether the tax has been paid.[10] As the prospective purchaser or lender must go to the probate records to learn whether the would-be transferor or borrower has authority or title to make an effective transfer or hypothecation, there is nothing unreasonable in expecting him also to inquire from the same source whether the estate tax liability has been satisfied. If his search there leaves him in doubt, he can, through the executor, have recourse to the procedure of subsections (b) and (c) of Section 313 of the Revenue Act of 1926 (Appendix, *infra,* pp. 45–46).

Subsection (b) provides that upon application by the executor as defined in Section 300 (a), the Commissioner shall as soon as possible but in any event within one year notify the executor of the amount of the tax, and payment of this amount by the executor shall discharge him from personal liability for any deficiency thereafter found. Subsection (c) provides that this release of the executor shall not operate to release any part of the gross estate from the lien for such a deficiency "unless the title to such part of the gross estate has passed to a bona fide purchaser for value." As the parties herein agree that the Bank, like any Michigan mortgagee without notice, is a bona fide purchaser for value (Bank's Br. 48), the

[10] The fact that this is a more likely protection in the case of real property than of personal property is not a valid objection to this argument, since the same is true of the protection afforded by recording laws.

Bank could have protected itself by this procedure.[11] The Bank's argument that the statute is inapplicable where a bona fide purchaser acquires less than legal title is contrary to the practice of the Treasury since 1916 and is not supported by either the purpose of the statute or by the applicable provision of the regulations, Article 88 of Regulations 70 (Appendix, *infra*, p. 52). In any event any purchaser at a foreclosure sale would clearly be "a bona fide purchaser for value" and would be protected by it. Whether the State of Michigan and its political subdivisions could have been similarly protected seems immaterial since there is no suggestion that they were misled into performing governmental services and imposing taxes by the lack of recordation of the federal estate tax lien.

Subsection (c) of Section 313 does more than provide prospective purchasers and lenders with a means of protecting themselves which would be superfluous if the lien were governed by Section 3186. It also shows that the estate tax lien arises under Section 315 (a) rather than Section 3186.

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[11] The Bank makes the suggestion that this procedure avails the prospective purchaser or lender nothing since he cannot compel the executor to act pursuant to Section 313 (b). Of course neither can the prospective purchaser or lender be compelled to buy or lend should the executor refuse. The Bank's dilemma stems not from an executor's refusal but from the Bank's failure to utilize the machinery available to it.

Subsection (c) of Section 313 contemplates that the estate tax lien be in *effective* existence before the assessment of a deficiency, since it provides that only where the executor obtains such a release shall property sold to a bona fide purchaser prior to the assessment of a deficiency be free from the lien for such a deficiency. The assessment list can not be received by the Collector until after the deficiency was assessed, and the lien under Section 3186 does not become effective until the Collector receives the assessment list. Since Section 313 (c) contemplates that the lien would be in effective existence before the deficiency is assessed, the conclusion is compelled that the lien arises not under Section 3186 but under some other section which can only be Section 315 (a).

The difficulties peculiar to the collection of estate taxes furnish ample reason why Congress should have distinguished between the estate tax lien and the lien created by Section 3186 so far as the recording requirement is concerned. The facts of the instant case are illustrative. Decedent died May 5, 1926. His widow filed a federal estate tax return July 5, 1927. On March 14, 1930, the Commissioner of Internal Revenue notified the decedent's widow of the determination of a proposed deficiency in federal estate taxes in the amount of $23,000. An appeal was taken from the notice of deficiency by the widow to the United

States Board of Tax Appeals on May 10, 1930. Under Section 308 (a) of the Revenue Act of 1926 the Commissioner was precluded from making an assessment until the decision of the Board became final. This occurred about February 19, 1933. On the latter date an assessment was made for a deficiency of about $23,000 and accrued interest of about $8,000. Under Section 3186 no lien would have arisen until the assessment list was sent to the Collector, subsequent to February 19, 1933, almost seven years after decedent's death. In the meantime purchasers, mortgagees or judgment creditors might have acquired rights which, under Section 3186, would prevail over the United States because the lien would not arise and could not be recorded prior to that date.

The estate tax differs from income and excise taxes in that it must be collected from a fixed corpus, the content of which is determined "as of" the date of decedent's death and which is rarely supplemented by subsequent additions. While income is an annual phenomenon which tends to supply a flow of assets from which other types of past due taxes can be collected as long as a tax debtor lives, the estate tax is collectible only from the assets left by the decedent. If the tax is not collected from those assets it becomes forever uncollectible. As the estate tax cannot possibly be determined contemporaneously with the death of a decedent, a lien attaching at the

date of death is thus necessary to protect the tax during the interval which must necessarily elapse before the amount of the tax is determined. The Government is not usually advised of the decedent's death immediately and a recording requirement would mean that the tax would be unprotected until the notice of death was received, the location of the property ascertained, the amount of the tax determined, and the notices of lien actually filed. The construction of Section 315 for which the Bank contends would thus result in delay and palpably jeopardize the Government's claim for estate taxes. In any weighing of the equities the vital policy favoring the protection of the Government's revenues must be considered.[12]

The decisions of the lower courts squarely affirm the Government's understanding of Section 315 (a) as applied to subsequent mortgagees. In addition to the decisions of the courts below in the instant case, the same conclusion has been reached in *United States* v. *Security-First Nat. Bank, supra,* and *United States* v. *McGuire, supra.* There is no contrary decision.

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[12] The difficulties inherent in collection of the estate tax appear to have been recognized by Congress in Section 411 of the Revenue Act of 1942 (Appendix, *infra*, pp. 51–52). Although Section 411 relieves property sold to bona fide purchasers of the lien for estate taxes, a compensating remedy was provided whereby all the property of the legatee, etc., who sold to the bona fide purchaser is subjected to the lien.

III

AS APPLIED TO BIND SUBSEQUENT MORTGAGEES, SECTION 315 (A) DOES NOT OFFEND THE FIFTH AMENDMENT.

Any substantial contention that Section 315 (a), as applied to bind subsequent mortgagees, offends the Fifth Amendment is foreclosed by *United States* v. *Snyder, supra*, decided by an unanimous Court in 1893. In that case the taxpayer, Snyder, became liable to the Government in 1878 for the payment of internal revenue taxes imposed on the manufacture of tobacco. The taxes were duly assessed and certified to the Collector of Internal Revenue, who made demand for payment in November, 1879. By the terms of Section 3186 of the Revised Statutes as it then stood, a lien attached to the taxpayer's property at this time, recordation not being required. In 1885, four years after the taxpayer had sold some of the real property to which the lien had attached to a bona fide purchaser for value, the United States sued to foreclose its lien. The purchaser defended on the ground that the Government had failed to record its lien in accordance with Article 176 of the Louisiana Constitution. That article provided (149 U. S., at p. 213) that "No mortgage * * * on immovable property shall affect third persons, unless recorded or registered in the parish where the property is situated * * *." The single question presented for con-

sideration, said this Court, was "whether the tax system of the United States is subject to the recording laws of the States" (p. 213). Holding that the real estate remained subject to the Government's lien, the Court put its decision on the following ground (p. 214):

> The power of taxation has always been regarded as a necessary and indispensable incident of sovereignty. A government that cannot, by self-administered methods, collect from its subjects the means necessary to support and maintain itself in the execution of its functions is a government merely in name. If the United States proceeding in one of their own courts, in the collection of a tax admitted to be legitimate, can be thwarted by the plea of a state statute prescribing that such a tax must be assessed and recorded under state regulation, and limiting the time within which such tax shall be a lien, it would follow that the potential existence of the government of the United States is at the mercy of state legislation.
>
> Moreover, it scarcely seems necessary to look beyond the Constitution itself for a decisive reply to the question we are now considering. The 8th section of the 1st article declares that "the Congress shall have power to lay and collect taxes, duties, imposts and excises, . . . but all duties, imposts and excises shall be uniform throughout the United States." The power to impose and collect the public burthens is here given in terms as absolute as the language affords.

> The provision exacting uniformity throughout the United States itself imports a system of assessment and collection under the exclusive control of the general government. And both the grant of the power and its limitation are wholly inconsistent with the proposition that the States can by legislation interfere with the assessment of Federal taxes, or set up a limitation of time within which they must be collected.

Twenty years after this decision Section 3186, as we have seen (*supra*, p. 20), was amended to require recording of the Government's lien in order to bind subsequent mortgagees, purchasers, and judgment creditors. Section 315 (a), on the other hand, contains no recording requirement and in this respect is on all fours with Section 3186 as it stood prior to 1913. The *Snyder* decision is thus fully applicable to the instant case.

Notwithstanding this, the Bank argues (Br. 39–48) that to impose a lien upon the property in its hands as mortgagee amounts to a discrimination offensive to the Fifth Amendment. This argument is grounded upon Section 315 (b) of the Revenue Act of 1926, which after referring to property transferred in contemplation of death and to transfers intended to take effect in possession or enjoyment at or after death, provides that—

> Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be

> divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

The Bank, as we understand its position, points to the fact that a bona fide purchaser for value of property of the character covered by Section 315 (b) takes free and clear of the Government's lien, whereas a purchaser, like itself, of property in which decedent held an interest as a tenant by the entirety takes subject to the Government's lien. This, it concludes, works an unfair discrimination among classes of purchasers. We submit that this claim is untenable.

Unlike the Fourteenth Amendment, the Fifth Amendment contains no equal protection clause. *LaBelle Iron Works* v. *United States,* 256 U. S. 377, 392; *Steward Machine Co.* v. *Davis,* 301 U. S. 548, 584–585; *Currin* v. *Wallace,* 306 U. S. 1, 14; *Sunshine Coal Co.* v. *Adkins,* 310 U. S. 381, 400–401. If, as in *Currin* v. *Wallace, supra,* it be assumed that there "might be discrimination of such an injurious character as to bring into operation the due process clause of the Fifth Amendment", it seems apparent that this case does not present that situation. The Bank is not called upon to pay any tax. Property in its hands is subjected to a lien which attached prior to the date of its mortgages, but this, standing by itself, is plainly constitutional. It is true that had the

mortgages been secured from one of the transferees included within Section 315 (b), the property would now be clear of the Government's lien. But the Bank knew with whom it was dealing and it is charged with a knowledge of the law. Had the Bank chosen to confine its lending activities to transferees included within the scope of Section 315 (b), it could readily have done so. Furthermore, in lending money to others it could have insisted upon compliance with Section 313 (b) and (c); this, as we have seen (*supra*, pp. 25–26), would have put its mortgages on a parity with those included within Section 315 (b).

Moreover, it cannot be said that Congress lacked rational basis in freeing from the lien property mortgaged by one of the class of transferees described in Section 315 (b) and in preserving the lien under similar circumstances with respect to the balance of the gross estate. Transfers of property in contemplation of death and transfers intended to take effect in possession or enjoyment at or after death, dealt with in Section 315 (b), differ from the other types of property which make up the gross estate. Among the latter classes of property are personal property coming into the hands of an executor or administrator and real estate passing from decedent to an heir or devisee, Section 302 (a); the dower or curtesy interests of a surviving spouse, Section 302 (b); transfers in which decedent retained the right at the date of his death to alter, amend or revoke,

Section 302 (d); tenancies by the entirety, Section 302 (e); and property passing under a general power of appointment exercised by the decedent's will, Section 302 (f).

There is a difference in the degree of notice afforded by the mere existence of the taxing statute which sets the property dealt with in Section 315 (b) apart from the other classes making up the gross estate. Accordingly the classes are not on a parity and Congress had an adequate reason for treating them differently. For example, a purchaser or mortgagee of property conveyed in contemplation of death is not put on notice of the circumstances of the conveyance or that the original grantor has died and that the essential condition precedent to the accrual of estate tax liability has thus occurred. On the other hand, a purchaser or mortgagee of property held by the decedent at the time of his death as a tenant by the entirety is put on notice by a most casual title search that the property was so held by the decedent; and the purchaser or mortgagee, like the Bank in the instant case, may be reasonably expected to satisfy himself that the decedent is dead before he will be willing to accept a deed or mortgage executed solely by the surviving tenant. In the latter situation, therefore, the purchaser or mortgagee necessarily knows that the condition precedent to the accrual of estate tax liability has occurred, and he is charged with a knowledge of the law that at the date of de-

cedent's death a lien attached to the entire gross estate, including entirety property.

Balancing the public interest in protecting a *bona fide* purchaser for value against the protection of the Government's revenues, Congress might well have concluded that in the former situation, but not in the latter, the interest in protecting the purchaser equalled or even outweighed the Government's requirements. In the former class of cases Congress evidently was content to rely upon the personal liability of the decedent's transferee and the lien attaching, under Section 315 (b), to the proceeds of the mortgage or sale. If this was the basis of choice, as it undoubtedly was,[18] the Bank has no standing to argue that

[18] The amendments made to Sections 302 and 315 (b) by Section 803 of the Revenue Act of 1932, c. 209, 47 Stat. 169, tend to confirm this view. The 1932 amendment expressly included within Section 302 transfers under which decedent retained for his life or any period not ascertainable without reference to his death, etc., certain specified interests in the transferred property. Section 315 (b) was then amended to include the transfers so expressly added to Section 302. It is noteworthy that in thus reconsidering the scope of Section 315 (b), Congress failed to add any other parts of the gross estate, such as tenancies by the entirety, so as to divest them of the lien in the hands of a bona fide purchaser for value. However, it should also be noted that by Section 411 of the Revenue Act of 1942 (Appendix, *infra*, p. 51). Congress has now, with respect to the estate of decedents dying after the enactment of that Act (Section 401), divested from the estate tax lien parts of the gross estate "sold * * * to a bona fide purchaser for an adequate and full consideration in money or money's worth" by any transferee of the decedent, including a surviving tenant by the entirety. Con-

the legislative decision was erroneous. "As to such choices, the question is one of wisdom and not of power." *Currin* v. *Wallace, supra,* p. 14; see *Steward Machine Co.* v. *Davis, supra; Carmichael* v. *Southern Coal Co.,* 301 U. S. 495, 509–514.

The Bank contends that for still other reasons the statute as applied by the courts below produces arbitrary and capricious results. It is argued (Br. 55–59) that in order to comply with Section 313 and thus obtain a marketable title it is necessary as a practical matter for the executor either to fail to pay the tax within the time provided by law or, at the very least, to forego the option, now provided by Section 811(j) of the Internal Revenue Code, of valuing the gross estate as of a date one year after the decedent's death. It is likewise maintained (Br. 59–61) that from the statute it is doubtful whether a lien attaches to the consideration received from a mortgage or sale of parts of the gross estate; that if it does not, the Bank's position as mortgagee is worse than that of the mortgagor or vendor; but that if it does, other results follow which "verge on the fantastic."

With respect to the problems connected with the payment of the tax, the Bank brushes aside, as indeed it must, the provisions authorizing the

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comitantly, personal liability for the payment of the tax to the extent of the value at decedent's death of property in the transferee's hands is imposed upon each such transferee.

Commissioner of Internal Revenue to extend the time for payment of the tax in the case of undue hardship. See Section 305 of the Revenue Act of 1926; Section 822(a)(2) of the Internal Revenue Code. In any event, the Bank has no standing to complain that the estate's constitutional rights, and not its own, are infringed. *Virginian Ry.* v. *Federation,* 300 U. S. 515, 558.

With respect to the imposition of the lien, we should suppose it clear, contrary to the Bank's doubts, that the consideration received from a sale or mortgage of any part of the gross estate remains subject to the lien in the hands of the mortgagor or vendor. This is expressly provided in Section 315(b) as to a part of the gross estate and as to the balance would seem to follow *a fortiori* from Section 313(c). The suggestion is baseless, therefore, that a mortgagee, such as the Bank, fares worse than the mortgagor.

The final answer to these objections of the Bank is that these problems are inherent in the collection of estate taxes without regard to whether notice of the lien is filed or not. The Bank recognizes that the lien for federal estate taxes attaches at the date of decedent's death (Br. 19), and complains only that it is bound without notice of the lien. However, even if it were possible to file appropriate notices wherever a decedent's property might be located simultaneously with his death, it is evident that this would not solve the executor's problem of secur-

ing a marketable estate in order to raise sums for the payment of the tax. Furthermore, even the Bank would acknowledge that if notice of the estate tax lien were filed, the Bank, as a mortgagee of entirety property, would take subject to the lien. Yet in such circumstances the same problems as those posed by the Bank would immediately arise, namely, whether the lien attaches to the consideration received and follows the consideration into the hands of a second bona fide purchaser for value. While, as we have indicated, we think these various problems are readily answerable from the terms of the statute and the application of equitable principles, it seems clear that they are irrelevant to the instant case. They are latent in any provision for a lien to secure the payment of taxes. Unless the estate tax lien itself is unconstitutional, which is not contended, the various collateral problems which attend the enforcement of any lien are necessary incidents of the exercise of a constitutional power and not independently open to question.

IV

THE GOVERNMENT'S LIEN FOR FEDERAL ESTATE TAXES IS FIRST IN TIME AND THE PROVISIONS OF THE FEDERAL CONSTITUTION PREVENT THE STATE FROM DISPLACING IT IN FAVOR OF SUBSEQUENT LIENS OF ITS OWN AND ITS POLITICAL SUBDIVISIONS

The State of Michigan, the County of Wayne, and the City of Detroit, in No. 214, contend that

their respective liens for real estate taxes are superior in right to the lien of the United States. Their liens for real estate taxes did not become operative prior to 1929 (R. 115–129, 239), some three years after the federal lien attached on May 5, 1926. Petitioners insist that the precedence in point of time of the federal lien is immaterial and that their liens are superior because (a) of various provisions of Michigan law, and (b) of an asserted inapplicability and invalidity of Section 315 (a).

Petitioners' contentions regarding Michigan law are (1) that the United States did not comply with the recording requirements of Section 3746 of the Compiled Laws of Michigan (Appendix, *infra*, pp. 49–50), which are made applicable by federal law (Section 3186, Revised Statutes), and (2) that Section 3429 of the Compiled Laws of Michigan (Appendix, *infra*, p. 49) makes the lien of the State, County and City real estate taxes a "first" lien.

(1) The applicability of Section 3746 is doubtful since it refers only to liens under Section 3186 of the Revised Statutes. As the federal estate tax lien arose under Section 315 (a) the proper conclusion seems to be that the Michigan statute does not purport to apply in this case.[14] But assuming that petitioners' construction of

[14] *United States* v. *Maniaci*, 36 F. Supp. 293 (W. D. Mich.), affirmed in 116 F. 2d 935 (C. C. A. 6th), cited by the State, is irrelevant since it involved a lien under Section 3186.

Section 3746 is correct, the only consequence of the failure of the United States to comply is that stated in Section 3186 of the Revised Statutes—namely, that the lien is not valid as against any mortgagee, purchaser or judgment creditor. Neither the State, County, nor City falls within these categories. Any argument that the State's authority to interfere with federal liens is not limited to the field permitted by Section 3186, Revised Statutes, is foreclosed by *United States* v. *Snyder, supra.*

(2) Petitioners' construction of Section 3429 is dubious. It merely provides that such taxes shall "become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof." This provision would seem merely to protect the lien against any bar due to passage of time. Any indication that the lien is to be a "first" lien must therefore rest upon the provision which follows, dealing with personal property. That provision states that the lien "shall also be a first lien, prior, superior and paramount, on all personal property * * *." Any inference drawn from "also" would seem to be overcome by the conflicting inference of "personal property". The

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Probably the case is erroneous as well, since Section 3186 permits the States to designate only the place where the notice is filed and not its contents as the Michigan statute attempts to do. Cf. Section 505 of the Revenue Act of 1942, which makes it clear beyond dispute that the States may designate only the place where the notice shall be filed.

Michigan cases cited by the State are inconclusive under the present statute.

Whatever may be the proper construction of Section 3429, it cannot be effective against a prior federal lien. It was squarely held in *United States* v. *Texas,* 314 U. S. 480, 486, that similar language in a Texas statute did not override the priority accorded by Section 3466, Revised Statutes.[15] That the federal priority here is achieved by a lien would not seem to change the result, and the only federal appellate decision on the subject has so held. *United States* v. *City of Greenville,* 118 F. 2d 963 (C. C. A. 4th).

That result rests upon the principle that no State can interfere with the constitutional exercise of the federal power to lay and collect taxes (Article I, Section 8), relied on in *United States* v. *Snyder, supra.* The result is buttressed by the Supremacy Clause (Article VI). *New York* v. *Maclay,* 288 U. S. 290.

Aside from their contentions regarding Michigan law, petitioners contend that Congress did not intend to make the federal lien superior to subsequently attaching liens. This is based upon the fact that the federal statute does not specifically provide for a "first" lien. But it is the very essence of a lien that it prevails over subsequently arising rights. *Beall* v. *White,* 94 U. S. 382, 388; *Howard* v. *Railway Co.,* 101 U. S. 837, 845; *Burton* v. *Smith,* 13 Pet. 464, 483; *United States* v.

[15] U. S. C., Title 31, sec. 191.

Alabama, 313 U. S. 274; *Rankin* v. *Scott,* 12 Wheat. 177, 179. Tax liens serve the same general purpose as Section 3466 and the lien statute should therefore receive the same liberal construction. *United States* v. *Emory,* 314 U. S. 423, 426. At least the lien statute should not be construed to deny to federal liens those incidents which normally accompany ordinary liens.

The plea that unless the state liens are granted paramountcy the State will be deprived of all means of collecting its taxes herein involved means only that the State and the United States are similarly situated in that respect. The federal estate tax deficiency has not been paid and nothing in the record suggests that the United States will be able to collect it elsewhere.

Petitioners' argument as to the effect and validity of Section 315 (a) proceeds as if the United States were attempting to displace a state lien, prior in time, by a subsequent federal lien. This is particularly true of pages 32 to 34 of their brief, and also of pages 19–23 of their brief. The fact is, however, that the federal lien attached over three years before the various state liens, and the State is attempting to achieve paramountcy for its tax liens over a pre-existing federal tax lien. As we have seen, the state lacks power to do this. The relationship between the states and the Federal Government leaves no room for the application of the principles upon which the states may displace prior private liens.

CONCLUSION

For the above reasons we submit that the judgments of the Circuit Court of Appeals for the Sixth Circuit should be affirmed.

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NOVEMBER, 1942.

APPENDIX

Revenue Act of 1926, c. 27, 44 Stat 9:

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

* * * * *

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. * * *

* * * * *

(e) To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: * * *

* * * * *

SEC. 313. * * *

(b) If the executor makes written ap-

plication to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner (as soon as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in section 310) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

(c) The provisions of subdivision (b) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

* * * * *

SEC. 315 (a) Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) If (1) the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth) or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

Revised Statutes, as amended by the Act of February 26, 1925, c. 344, 43 Stat. 994:

SEC. 3186. That if any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a

lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto upon all property and rights to property belonging to such person: *Provided, however,* That such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated: *Provided further,* That whenever any State by appropriate legislation authorizes the filing of such notice in the office of the registrar or recorder of deeds of the counties of that State, and in the State of Louisiana in the parishes thereof, and in the States of Connecticut, Rhode Island, and Vermont in the office of the registrar or recorder of deeds or town or city clerk having custody of the land records of the towns and cities, then such lien shall not be valid in that State against any mortgagee, purchaser, or judgment creditor until such notice shall be filed in the office of the registrar or recorder of deeds of the county or counties, or parish or parishes in the State of Louisiana, or in the office of the registrar or recorder of deeds or town or city clerk having custody of the land records in the States of Connecticut, Rhode Island, and Vermont of the towns or cities within which the property subject to the lien is situated.[1]

[1] The above represents the provisions of Section 3186 as they stood when the decedent died. They were subsequently amended by Section 613 (a) of the Revenue Act of 1928, c. 852, 45 Stat. 791, and by Section 509 of the Revenue Act of 1934, c. 277, 48 Stat. 680, and, as so amended, were in-

Compiled Laws of the State of Michigan, 1929:

3429 [as amended by Act No. 38 of the Extra Session of 1934] *Property taxes; lien after December 1; precedence of lien, exception, city personal property tax lien.* SEC. 40. The taxes thus assessed shall become at once a debt due to the township, city, village and county from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day of December, for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. And all personal taxes hereafter levied or assessed shall also be a first lien, prior, superior and paramount, on all personal property of such persons so assessed from and after the first day of December in each year for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, and so remain until paid, * * *.

3746 *U. S. tax liens; filing of notice, contents; register of deeds, duty.* SECTION 1. That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United

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corporated in Sections 3670–3677 of the Internal Revenue Code. (U. S. C., Title 26, Secs. 3670–3677.) Section 3672 of the Internal Revenue Code, in turn, was amended by Section 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862. Apart from clarifying the scope of Section 3186 as it stood in 1926 (*supra*, pp. 23–24), none of these amendments appears pertinent to this case.

States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the state of Michigan pursuant to section three thousand one hundred eighty-six [3186] of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty [50] cents for such notice, file and index the same in a separate book, entitled "Record of United States Tax Liens", indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six [3186] of the revised statutes of the United States.

Constitution of the United States:

ARTICLE I

* * * * *

SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

* * * * *

ARTICLE VI

* * * * *

This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

* * * * *

Revenue Act of 1942, Public Law 753, 77th Cong., 2d Sess:

SEC. 411. LIABILITY OF CERTAIN TRANSFEREES.

(a) *Imposition of Liability.*—Section 827 (b) is amended to read as follows:

"(b) *Liability of Transferee, Etc.*—If the tax herein imposed is not paid when due, then the spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under section 811 (b), (c), (d), (e), (f), or (g), to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property sold by such spouse, transferee, trustee, surviving tenant, person in possession of property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien provided in section 827 (a) and a like

lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth."

(b) *Definition of Transferee.*—Section 900 (e) is amended to read as follows:

"(e) *Definition of 'Transferee'.*—As used in this section, the term 'transferee' includes heir, legatee, devisee, and distributee, and includes a person who, under section 827 (b), is personally liable for any part of the tax."

Treasury Regulations 70 (1926 ed.), Article 88:

Property subject to lien.—This lien attaches to every part of the gross estate, whether or not the property comes into the possession of the duly qualified executor or administrator. It attaches to the extent of the tax shown to be due by the return and of any deficiency tax found to be due upon review and audit.

The lien upon the entire property constituting the gross estate continues for a period of 10 years after the decedent's death, except—

* * * * *

(3) Such portion of the gross estate as has passed to a bona fide purchaser for value after payment of the full amount of tax determined by the Commissioner pursuant to a request of the executor for discharge from personal liability, as authorized by section 313 (b) and (c) (see Art. 67), but there is substituted a like lien upon the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

* * * * *

U. S. GOVERNMENT PRINTING OFFICE: 1942

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SUPREME COURT OF THE UNITED STATES.

No. 156.—October Term, 1942.

The Detroit Bank, formerly the Detroit Savings Bank, a Michigan Banking Corporation, Petitioner, *vs.* The United States of America. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[January 4, 1943.]

Mr. Chief Justice Stone delivered the opinion of the Court.

The questions for decision are:

(1) Whether the lien for federal estate taxes authorized by § 315(a) of the Revenue Act of 1926, 44 Stat. 9, 80, attaches to the interest of the decedent in an estate by the entirety.

(2) Whether the lien is required to be recorded under the provisions of R. S. § 3186, as amended, in order to give it superiority to the lien of a mortgagee who acquired his mortgage for value in good faith without knowledge of the tax lien.

(3) Whether § 315(a), so applied as to give the lien superiority over such subsequent mortgages, offends the Fifth Amendment.

The Government brought the present suit in the district court pursuant to R. S. § 3207, to foreclose an asserted lien for estate taxes assessed under § 302(e) upon certain parcels of real estate. The real estate had been owned at the time of his death by decedent and his wife as tenants by the entirety. Following his death the real estate was not included as a part of his estate in computing the federal estate tax. Prior to assessment or payment of the tax, the parcels of real estate in question were mortgaged, some by decedent's widow and others by his children, to petitioner who acted without knowledge of the Government's asserted lien or claim for taxes. Default in payment of the mortgage indebtedness having occurred, petitioner bought in the mortgaged property on foreclosure sale. The trial court found that petitioner acquired the mortgages in good faith and for value.

The Commissioner of Internal Revenue assessed an estate tax deficiency against decedent's estate by reason of the failure to in-

clude the value of the estate by the entirety in the computation of the tax, which the Board of Tax Appeals sustained. The Government then brought the present proceeding to enforce the lien. The district court held that the tax lien, although unrecorded, was superior to the mortgage lien and to local, state and county liens for taxes, which had accrued after the death of decedent. The Circuit Court of Appeals affirmed, 127 F. 2d 64. We were moved to grant certiorari, 317 U. S. —, by the importance of the questions presented to the administration of the revenue laws.

Section 315(a) of the Revenue Act of 1926 provides in part that:

"Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed."

The lien attaches at the date of the decedent's death, since the gross estate is determined as of that date and the estate tax itself becomes an obligation of the estate at that time without assessment. See *Hertz* v. *Woodman*, 218 U. S. 205, 220; *Ithaca Trust Co.* v. *United States*, 279 U. S. 151, 155; *United States* v. *Ayer*, 12 F. 2d 194; *Rosenberg* v. *McLaughlin*, 66 F. 2d 271. That the lien attaches at the decedent's death without necessity for assessment or demand is implicit in the proviso that such part of the estate as is used for payment of charges against the estate and expenses of administration shall be "divested of the lien".

Petitioner urges that since the lien here asserted is "upon the gross estate of decedent" it does not attach to the land held by the entirety which passed to the decedent's widow, not as a part of his estate but by her right to survivorship. But this argument disregards the fact that the lien is for the particular tax imposed by § 302 of the Revenue Act of 1926 upon "the value of the gross estate of decedent" at the time of his death, including "the value at the time of his death of all property real or personal . . . (e) to the extent of the interest therein held . . . as tenants by the entirety by the decedent and spouse . . ."

Since the lien authorized by § 315(a) is for the tax which in its computation includes as a part of the taxable estate the value of the estate by the entirety, see *Tyler* v. *United States,* 281 U. S. 497, we think it too plain for argument that the lien extends to the estate as thus defined and made the base on which the tax is computed. The gross estate of decedent within the meaning of § 315(a) is the estate or property on which the tax chargeable to decedent's estate is computed. Congress, in § 314(b), similarly denominated the proceeds of insurance on the life of decedent payable to beneficiaries as "a part of the gross estate" in providing for recovery from the beneficiaries of their pro rata shares of the estate tax. We cannot impute to Congress an intention not disclosed by the statute or its legislative history to exclude from the tax lien property which it directs to be included in the decedent's gross estate for the purpose of computing the tax.

Nor can we conclude, as petitioner argues, that the lien for estate tax authorized by § 315(a) is subject to the earlier provision for recording tax liens in R. S. § 3186. This section, so far as now relevant, provides,

"That if any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the Collector, except when otherwise provided, until paid . . . . upon all property and rights to property belonging to such person, provided, however, that such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the Collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated . . . ."

The section contains a further proviso that whenever any state, by appropriate legislation, makes provision for the filing of such notice in the office of a registrar or recorder of deeds "then such liens shall not be valid in that state against any mortgagee, purchaser or judgment creditor until such notice shall be filed" in the appropriate office. Michigan has made provision for filing notices of such tax liens in the offices of the registers of deeds in the counties of the state. § 3746 Compiled Laws of Michigan, 1929, ~~as amended by Act No. 38, Extra Session 1934~~.

The part of R. S. § 3186 imposing the lien was enacted in 1866, 14 Stat. 136. The provision for filing notice of government tax liens was added by amendment of March 4, 1913, 37 Stat. 1016. Before the amendment this Court had held in *United States* v.

Snyder, 149 U. S. 210; cf. *United States* v. *Curry,* 201 Fed. 371, 374, that in the absence of a federal statute requiring government tax liens to be recorded they are superior to subsequent mortgages.

Petitioner contends that Congress, in enacting § 209 of the Revenue Act of 1916, which, with amendments, became § 315(a) of the Revenue Act of 1926, did not impose an independent lien but merely made expressly applicable to the federal estate tax the lien created by R. S. § 3186, modifying that lien in some respects as will be further noted. It urges that save where inconsistent with the express terms of § 315(a), all provisions of R. S. § 3186 are made applicable to the estate tax lien by reason of § 211 of the Revenue Act of 1916, which provides:

"That all administrative, special and general provisions of law, including the law in relation to the assessment and collection of taxes not heretofore specifically repealed are hereby made to apply to this title so far as applicable and not inconsistent with its provisions."

But we think that the differences between R. S. § 3186 and § 315(a), and their legislative history as separate enactments, indicate that each was intended to operate independently of the other.

Section 3186 refers only to liens which are made such by that section. Section 315(a) authorizes the lien for estate taxes and makes no reference to R. S. § 3186 or to any requirement for recording notice of the lien. The lien of R. S. § 3186 is upon all the property of the person liable for the tax, while the lien of § 315(a) attaches only to the property included in and taxed as the gross estate not used to pay administration expenses. The lien of R. S. § 3186 continues until the tax liability is paid while the lien of § 315(a) continues for ten years from the death of the decedent. Of particular significance is the difference in time when the liens attach under the two sections. Under R. S. § 3186 there is no lien and no notice can be recorded until there has been a demand by the collector and a refusal to pay it by the taxpayer. Under § 315(a) as has been stated, the lien arises on the death of the decedent and becomes effective against purchasers and mortgagees without assessment or demand and obviously before it would be possible to record a notice of lien under the provisions of R. S. § 3186.

Since the enactment of Revenue Act of 1916, R. S. § 3186 has been amended four times,[1] and § 209 of the Revenue Act of 1916

[1] Act of Feb. 26, 1925, 43 Stat. 994; Revenue Act of 1928, § 613, 45 Stat. 875; Revenue Act of 1934, § 509, 48 Stat. 757; Revenue Act of 1939, § 401, 53 Stat. 882. The section is now §§ 3670-77 of the Internal Revenue Code.

(which became § 315(a) of the 1926 Act) has been amended twice and twice reenacted without amendment.[2] With one exception, in none of the amendments or reenactments of the one section was any reference made to the other. Section 409 of the Revenue Act of 1921 added a provision to the estate tax lien section authorizing the Commissioner under certain circumstances to release the lien. A similar provision was not added to R. S. § 3186 until the Revenue Act of 1928. By § 613 of that Act, § 3186 was amended to provide for such release, the amendment, by subsection (f), being made applicable to "a lien in respect of any internal revenue-tax, whether or not the lien was imposed by this section".

At the same time, the release provision of § 315(a) was repealed. By § 809 of the Revenue Act of 1932, however, the latter was reenacted, it having been discovered that there was need for a provision authorizing release of the estate tax lien prior to asessssment. H. Rep. No. 708, 72d Cong. 1st Sess. 50. Moreover it is not without significance that Congress, in enacting a gift tax in the Revenue Act of 1932, provided in § 510 of that Act that the gift tax should be a lien on the property passing to the donee, using words almost identical to these of § 315(a). The Committee Reports state that "by this provision there is imposed a lien additional to that imposed by section 3186 of the Revised Statutes". H. Rep. No. 708, 72d Cong. 1st Sess. 30; Sen. Rep. No. 665, 72d Cong. 1st Sess. 42. This history and the differences between the provisions already noted, would seem to compel the conclusion that § 315(a) was intended to operate independently of R. S. § 3186, and that the estate tax lien created by the former is not subject to the latter's requirement of recordation.

Sections 313(b) and (c) lend support to this conclusion. Subsection (b) sets up a procedure whereby the Commissioner may be required to certify the amount of the tax due and in that event subsection (c) releases any part of the gross estate subsequently acquired by a bona fide purchaser, from any lien for a deficiency in the tax which may be thereafter assessed—a procedure which would have afforded adequate protection to petitioner from any deficiency lien in this case. These provisions not only recognize that the lien comes into existence before the tax is assessed or de-

[2] Revenue Act of 1919, § 409, 40 Stat. 1100; Revenue Act of 1921, § 409, 42 Stat. 283; Revenue Act of 1924, § 315(a), 43 Stat. 312; Revenue Act of 1926, § 315(a), 44 Stat. 80. The section is now § 827 of the Internal Revenue Code.

manded, but they are unnecessary and inoperative if notice of the lien is required by R. S. § 3186 to be recorded.

It is evident from a comparison of the two sections that Congress, in providing for the estate tax lien, has proceeded on the assumption that in the case of the tax on property passing at death and which is distributed in consequence of the death, there is greater need of a lien in advance of assessment and demand for payment of the tax than in the case of other types of taxes; and that there is less need for protection of third persons by a recorded notice of the lien when the property passing at death is normally dealt with by probate and estate tax proceedings of public notoriety.

This is emphasized by the provisions of § 315(b) ~~and (c)~~ which relieve bona fide purchasers of property transferred *inter vivos* by the decedent in contemplation of death, from the lien which in the case of property transferred at death is enforcible against such purchasers. This provision, like § 313(c) would be unnecessary if R. S. § 3186 required notice of the lien to be recorded. The conclusion seems inescapable that the two sections apply independently, each of the other, at least to the extent that notice of the lien authorized by § 315(a) is not required to be recorded under R. S. § 3186. Whether the lien created by § 315(a) could be recorded by the procedures established by § 3186 and state statutes enacted in accordance with that section need not now be decided.

Petitioner also insists that the statute violates the Fifth Amendment by authorizing an unrecorded tax lien against the property mortgaged to it and withholding such a lien against innocent purchasers of property which a decedent had transferred *inter vivos* in contemplation of death. Unlike the Fourteenth Amendment, the Fifth contains no equal protection clause and it provides no guaranty against discriminatory legislation by Congress. *LaBell Iron Works* v. *United States,* 256 U. S. 377, 392; *Steward Machine Co.* v. *Davis,* 301 U. S. 548, 584-585; *Sunshine Coal Co.* v. *Adkins,* 310 U. S. 381, 400, 401; *Helvering* v. *Lerner Stores Co.,* 314 U. S. 463, 468. Even if discriminatory legislation may be so arbitrary and injurious in character as to violate the due process clause of the Fifth Amendment, see *Steward Machine Co.* v. *Davis, supra,* 585; *Currin* v. *Wallace,* 306 U. S. 1, 13, no such case is presented here.

For reasons already indicated we think there is adequate basis for the distinction made by the statute between innocent purchasers of property which passes at the decedent's death and those of property which he conveyed in his lifetime in anticipation of death. As

we have pointed out, the estate tax status of property passing at decedent's death is more readily ascertained than that of property which he has conveyed away in his lifetime and which so far as normal probate and tax proceedings are concerned would not appear to be related to his estate or taxable as a part of it. We do not find in such a classification any basis for saying that the discrimination in the statute is so arbitrary as to violate due process.

Affirmed.

Mr. Justice MURPHY took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.